SUPREME COURT OF THE UNITED STATES.

No. 50.

LESSEE OF JOHN POLLARD AND AL., PLAINTIFF IN ERROR,

vs.

JOSEPH T. FILES.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

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J. & G. S. Gideon, Printers.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the Judges of the Supreme Court of the State of Alabama, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest court of law or equity of the said State, in which a decision could be had, in the said suit between John Doe, *ex demise* of the heirs of William Pollard, *vs.* William Few, casual ejector, Bernard De Sylva, and Joaquim Rodrigues, tenants in possession, holding under Joseph T. Files, surviving co-partner of the firm of Cheeseborough and Files, who was admitted as defendant in their stead, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said constitution, treaty, statute or commission, a manifest error hath happened, to the great damage of the said John Pollard, William Pollard, John Fowler and Harriett his wife, late Harriett Pollard, Henry P. Ensign and Phebe his wife, late Phebe Pollard, George Huggins and Louisa his wife, late Louisa Pollard, and Joseph Case and Eliza his wife, late Eliza Pollard, heirs at law of William Pollard, deceased, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of January next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the honorable Roger B. Taney, Chief Justice of the said Supreme Court, this twenty-third of December, in the year of our Lord one thousand eight hundred and forty-one.

____ ____, ____ ____,
Clerk of the Supreme Court of the United States.

Allowed by, HENRY W. COLLIER,
Chief Justice of the Supreme Court of Alabama.

UNITED STATES OF AMERICA,

To Joseph T. Files, who was admitted as defendant, in the place of William Few, casual ejector, Bernard De Sylva and Joaquim Rodrigues, tenants in possession, holding under said Joseph T. Files, surviving co-partner of the firm of Cheeseborough and Files, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of January next, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of the State of Alabama, wherein John Pollard, William Pollard, John Fowler and Harriett his wife, late Harriett Pollard, Henry P. Ensign and Phebe his wife, late Phebe Pollard, George Huggins and Louisa his wife, late Louisa Pollard, and Joseph Case and Eliza his wife, late Eliza Pollard, heirs at law of William Pollard, deceased, plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this twenty-third day of December, in the year of our Lord one thousand eight hundred and forty-one.

HENRY W. COLLIER,
Chief Justice of the Supreme Court of Alabama.

The within citation has been served on us this fifth day of January eighteen hundred and forty-two, at Mobile.

STEWART and EASTON.
Attorneys for the defendants in error.

Received 6th day of January 1842, and on the same day I served a copy of the within citation on Joseph T. Files.

GEORGE HUGGINS,
Sheriff of Mobile County.
By M. J. D. BALDWYN.
Dep. Sheriff.

STATE OF ALABAMA, *Mobile county, ss:*

On this sixth day of January, in the year of our Lord one thousand eight hundred and forty-two, personally appeared before me,

the subscriber, M. J. D. Baldwyn, and makes oath that he delivered a true copy of the within citation to Joseph T. Files.

M. J. D. BALDWYN.

Sworn and subscribed to before me, this 6th day of January, A. D. 1842.

JO. CLEMENT, *J. P. M. C.*

Be it remembered, that at a term of the Supreme Court of the State of Alabama, began and held at the capitol, in the city of Tuscaloosa, on the first Monday, being the day of June, 1841, was filed in the clerk's office of said court, a writ of error and transcript, in the words and figures following, to wit:

STATE OF ALABAMA, *Mobile County, Circuit Court:*

JOHN DOE ex dem. of heirs of Wm. Pollard, plffs.
vs.
RICHARD FEW, defts.

Pleas before the honorable the circuit court of Mobile county in the above entitled cause, at a term of said court, begun and held on the third Monday of April, in the year of our Lord one thousand eight hundred and forty-one, his honor E. S. Dargan, judge, presiding.

Declaration in Ejectment.

THE STATE OF ALABAMA, *Mobile County:*

Circuit Court, November Term, 1837.

Richard Few, late of Mobile county, was attached to answer John Doe of a plea, wherefore with force and arms he entered into a messuage or lot of land with the appurtenances, situate in the county and city of Mobile, which John Pollard, William Pollard, John Fowler and Harriett his wife, late Harriett Pollard, Henry P. Ensign and Phebe his wife, late Phebe Pollard, George Huggins and Louisa his wife, late Louisa Pollard, Joseph Case and Eliza his wife, late Eliza Pollard, demised to the said John Doe for a term which is not yet expired, and ejected him from the said farm, and other wrongs to him did, to the great damage of the said John Doe, and against the peace and dignity of the State of Alabama; and whereupon the said John Doe, by his attorney, George F. Sallè, complains, that whereas the said John Pollard, William Pollard, John Fowler and Harriett his wife, Henry P. Ensign and Phebe his wife, George Huggins and Louisa his wife, Joseph Case and Eliza his wife, (which said John Pollard, William Pollard, Harriet, Phebe, Louisa, and Eliza, are the heirs at law of William Pollard, deceased) on the fifteenth day of March, one thousand eight hundred and thirty-seven, at the county and city aforesaid, had demised to

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the said John Doe the said messuage or lot of land lying in the city of Mobile, bounded on the north by the south boundary of what was originally designated as John Forbes & Co's canal; on the west by a lot now or lately in the occupancy of or claimed by Ezell; and on the south by what is now known as Government street, to have and to hold the said messuage or lot of land, with the appurtenances, to the said John Doe and his assigns, from the said fifteenth day of March, one thousand eight hundred and thirty-seven, to the end and term of fourteen years from thence next ensuing to be complete and ended. By virtue of which said demise, the said John Doe entered into the said messuage or lot of land, and was thereof possessed; and being so possessed thereof, the said Richard Few afterwards, to wit: on the seventeenth day of March, in the year aforesaid, with force and arms, &c., entered into the said messuage or lot of land which the said lessors demised to the said John Doe in form aforesaid, and for the term aforesaid, which is not yet expired, and ejected the said John Doe out of his said farm, and other wrongs to him did, to the great damage of the said John Doe, and against the peace and dignity of the State of Alabama; whereby the said John Doe saith, that he is injured and endamaged to the value of fifteen thousand dollars, and therefore he brings suit, &c.

Messrs. Joaquim Rodriguez & Bernard De Sylva:

I am informed that you are in possession of, or claim title to, the premises mentioned in this declaration of ejectment, or to some part thereof, and I being sued in this action as casual ejector, and having no claim or title to the same, do advise you to appear at the next term of the circuit court of Mobile county, to be holden on the second Monday after the fourth Monday of October, one thousand eight hundred and thirty-seven, by some attorney of that court, and then and there by a rule to be made of the same court, to cause yourselves to be made defendants in my stead, otherwise I shall suffer judgment to be entered against me by default, and you will be turned out of possession.

Yours, &c.,

RICHARD FEW.

August 2*d*, 1837.

It is ordered by the consent of the attorneys for both parties, that Bernardo de Sylva be made defendant in the stead of the now defendant, Richard Few, and do forthwith appear at the suit of the plaintiff, and [answer] a declaration in ejectment for the premises in question, and forthwith plead thereto not guilty; and upon the trial of the issue, confess lease, entry and ouster, and insist upon the title only; otherwise, let judgment be entered for the plaintiff against the now defendant, Richard Few, by default. And if upon the trial of the said issue, the said Bernardo De Sylva shall not confess

lease, entry, and ouster, whereby the plaintiff will not be able further to prosecute his writ against the said De Sylva, then no costs shall be allowed for not further prosecuting the same, but the said Bernardo de Sylva shall pay the costs to the plaintiff in that case to be taxed. And it is further ordered, that if upon the trial of the said issue a verdict shall be given for the said De Sylva, or it shall happen that the plaintiff shall not further prosecute his said writ for any other cause, therefore, not confessing lease, entry, and ouster, then the lessors of the plaintiff shall pay to the said De Sylva in that case to be adjudged.

Sheriff's Return to Declaration in Ejectment.

Received and executed the 3d Sept., 1837, by leaving with Bernardo De Sylva.

WM. MAGEE, *Shff., M. C.*
By M. J. D. BALDWIN, *dept. Shff.*

M. J. D. Baldwyn being duly sworn, deposes and says, that he did on the 5th September, 1837, personally serve Bernardo De Sylva, the defendant in this suit, who is the actual occupant of the premises for which this action is brought, with a true copy of the declaration hereto annexed, and a true copy of the notice in writing to the said declaration subjoined and hereto annexed.

M. J. D. BALDWYN.

Sworn to and subscribed before me, this 27th March, 1838.
CHARLES A. HENRY,
Justice of the Peace, Mobile County.

Narr. in Ejectment.

THE STATE OF ALABAMA, *Mobile county:*

Circuit Court, November Term, 1837.

Bernardo De Sylva, late of Mobile county, was attached, together with Joaquim Rodriguez, who hath since departed this life, and whom the said De Sylva survives, to answer John Doe of a plea, wherefore with force and arms he entered into a messuage or lot of land, with the appurtenances, situate in the county and city of Mobile, which John Pollard, William Pollard, John Fowler and Harriet his wife, late Harriet Pollard, Henry P. Ensign and Phebe his wife, late Phebe Pollard, George Huggins and Louisa his wife, late Louisa Pollard, Joseph Case and Eliza his wife, late Eliza Pollard, demised to the said John Doe for a term which is not yet expired, and ejected him from the said farm, and other wrongs to him did, to the great damage of the said John Doe, and against the peace and dignity of the State of Alabama. And whereupon the said John Doe, by his attorney, George F. Sallè, complains, that whereas the said John Pollard, William Pollard, John Fowler and Harriett his wife, Henry P. Ensign and Phebe his wife, George

Huggins and Louisa his wife, Joseph Case and Eliza his wife, (which said John Pollard, William Pollard, Harriett, Phebe, Louisa, and Eliza, are the heirs at law of William Pollard, deceased,) on the fifteenth day of March, one thousand eight hundred and thirty-seven, at the county and city aforesaid, had demised to the said John Doe the said messuage or lot of land lying in the city of Mobile, bounded on the north by the south boundary of what was originally designated as John Forbes & Co's canal; on the west by a lot now or lately in the occupancy of, or claimed by Bartlett and Waring; on the east by a lot now, or lately in the occupancy of, or claimed by Ezell; and on the south by what is now known as Government street, to have and to hold the said messuage or lot of land, with the appurtenances, to the said John Doe and his assigns, from the said fifteenth day of March, one thousand eight hundred and thirty-seven, to the end and term of fourteen years from thence next ensuing to be complete and ended. By virtue of which said demise, the said John Doe entered into the said messuage or lot of land, and was thereof possessed; and being thereof possessed, the said Bernardo De Sylva, and the said Rodriguez in his lifetime, afterwards, to wit: on the seventeenth day of March, in the year aforesaid, with force and arms, &c., entered into the said messuage or lot of land, which the said lessors demised to the said John Doe in form aforesaid, and for the time aforesaid, which is not yet expired, and ejected the said John Doe out of his said farm, and other wrongs to him did, to the great damage of the said John Doe, and against the peace and dignity of the State of Alabama; whereby the said John Doe saith, that he is injured and damaged to the value of fifteen thousand dollars, and therefore he brings his suit, &c. GEO. F. SALLE, *Atty., Plff.*

At a term of the Circuit Court, begun and held in and for the county of Mobile on the second Monday after the fourth Monday of October, in the year 1837.

JOHN DOE, ex demise of John Pollard, William Pollard, John Fowler and Harriet his wife, Henry P. Ensign and Phebe his wife, George Huggins and Louisa his wife, Joseph Case and Eliza his wife, plaintiffs,

vs.

RICHARD FEW, defendant.

In this cause a motion was made to change the venue, which motion, after being heard and considered, it is ordered that the venue of the same be changed to the county of Baldwin.

Change of Venue to Mobile county.

BLAKELY, *April* 15th, 1840.

It is hereby agreed by George F. Sallè, attorney for lessors of the plaintiffs, and Messrs. Stewart and Easton and Messrs. Gordon,

Chandler, and Campbell, attorneys for the defendants respectively, that the cases of John Optimus, ex dem. of the heirs of William Pollard, *vs.* Richard Pessimus; John Doe, ex dem. of the heirs of Wm. Pollard, *vs.* Richard Few; John Kemp, ex dem. of the heirs of Wm. Pollard, *vs.* James Thorpe; John Fairplay, ex dem. of the heirs of Wm. Pollard, *vs.* James Foulplay; and Oliver Thoroughgood, ex dem. of the heirs of Wm. Pollard, *vs.* Martin Grimalkin, now pending in the Circuit Court of Baldwin county, be transferred to the Circuit court of Mobile county, and set for trial on the second Monday of May next. It is further agreed, by the counsel aforesaid, that, on the trial of the said causes, neither party shall challenge a juror merely on the ground that he is a corporator, or resides in or holds property, real, in the city of Mobile. It is further agreed that the papers in the suits in which nonsuits have heretofore been had in the above causes be transferred to Mobile, to be used by either party.

GEO. F. SALLE,
STEWART & EASTON,
for defendants.
GORDON, CAMPBELL, & CHANDLER,
for defendants.

It is therefore ordered by the court, that, in pursuance of the above agreement, the causes therein named be returned to the Circuit Court of Mobile county, and be set for trial on the second Monday of May next, according to the terms of said agreement.

THE STATE OF ALABAMA, *Baldwin county.*

I, William H. Gasque, clerk of the Circuit Court of said county, do certify that the foregoing agreement and order is a true copy from the minutes of said court entered thereon this day.

Given under my hand and private seal, (there being no seal of [L. S.] said court,) this fifteenth day of April, eighteen hundred and forty.

W. H. GASQUE, *Clerk.*

John Fairplay, ex demise of the heirs of Wm. Pollard,
vs.
James Foulplay, Henry Stokes in possession.

John Doe, on demise of the heirs of Wm. Pollard,
vs.
Richard Few, Bernard De Sylva in possession.

John Optimus, on the demise of the heirs of Wm. Pollard,
vs.
Richard Pessimus, Bernard De Sylva in possession.

CIRCUIT COURT, MOBILE COUNTY, *Spring Term, A. D.* 1840.

His honor, Benjamin F. Porter, presiding.

On the 26th day of May, A. D. 1840, the following order was made in these three cases:

This day came the parties, by their attorneys; and thereupon they agreed to let these three cases go to the jury; the taking of testimony and the examination of witnesses; the opening argument of the plaintiff, and the argument of the defendant's counsel having consumed the entire day, the parties agree to discharge the jury till to-morrow morning at 9 o'clock. It is therefore considered by the court that these cases be continued over till to-morrow morning.

And on the 27th day of May, A. D. 1840, being another day of the aforesaid term, his honor, B. F. Porter, judge presiding as before, the following order was made in the above stated three cases:

These three cases were put to the jury together by consent; and it appearing to the satisfaction of the court that the jury cannot agree in these cases, they coming in a few minutes before the adjournment of the court, being half past 6 P. M., and they declaring that there is no possibility of their agreeing in six months, or longer, and the court being about to adjourn, having disposed of all the business of said term of the court, it is therefore ordered by the court that the jury be discharged, because they cannot agree as aforesaid, and the said causes stand continued.

At a term of the Circuit Court, holden at Mobile on the first Monday after the fourth Monday of October, A. D. 1840, his honor, Wm. Hale, judge presiding, the following order was made:

John Doe, ex dem. of the heirs of Wm. Pollard,
vs.
Richard Few.

Presiding judge of counsel, and continued.

John Doe,
vs.
Richard Few.

MOBILE CIRCUIT COURT.

April Term, 1841.

And the said Joseph T. Files, surviving partner of the late firm of Cheeseborough & Files, who is landlord, and who is admitted to defend in the lieu and stead of De Silva and Rodriguez, and saith that he is not guilty of the trespasses and ejectments in the said plaintiff's declaration specified; and of this he puts himself upon the country, &c.

CAMPBELL & CHANDLER,
STEWART & EASTON,
Attorneys for defendants.

And the said Joseph T. Files suggests to the court that, since the tenth day of January, in the year 1836, himself and the said Cheeseborough, as partners, did erect a three-story brick store on the premises sued for, which is a permanent and valuable improvement of great value now on said premises, to wit: of the value of ten thousand dollars, supposing and believing said lands to be their own; wherefore he prays the benefit of the statute in such cases made and provided, and that the value of the same may be ascertained and allowed them if the plaintiffs are entitled to recover.

CAMPBELL & CHANDLER,
STEWART & EASTON,
Attorneys for defendants.

At the spring term, A. D. 1841, of the Circuit Court of Mobile county, his honor, E. S. Dargan, judge presiding, on the 5th day of May, 1841, the following order was made:

John Doe, ex demise of the heirs of Wm. Pollard,
vs.
Richard Few.

This day came the plaintiffs, by their attorneys, and Joseph T. Files, who is surviving partner of Hiram Cheeseborough, the said Files and Cheeseborough, in the lifetime of said Cheeseborough, composing the firm of Cheeseborough and Files, by his attorney, comes and shows to the court now here that he is the landlord of B. De Silva, and that the said De Silva was tenant of said Files; and thereupon he prays to be admitted to defend the said action in the lieu and stead of said B. De Silva, which is allowed, and the said Files confesses lease, entry, and ouster, and admits he was in possession of the premises sued for at the time of the commencement of this suit, and still is, and waives the necessity of a new declaration, and agrees to rely on the question of title; and thereupon he filed his plea of not guilty, and also his suggestion, according to the form of the statute in such cases made and provided, of improvements made, and for which he claims compensation in case of recovery. And issue being joined thereupon, came a jury of good and lawful men, to wit: C. S. Davenport and eleven others, good and lawful men, who, being elected, tried, and sworn, well and truly to try the issue joined, upon their oaths do say: We, the jury, find the defendants not guilty. It is therefore considered by the court that the defendant go hence without day, and recover of the plaintiffs their costs in and about his suit in this behalf expended.

Bill of Exceptions.

Be it remembered that in the term of the circuit court begun and held in and for the county of Mobile, and State of Alabama, on the fifth day of May, in the year of our Lord one thousand eight hundred and forty-one, before the honorable E. S. Dargan, judge of the tenth

judicial district, came John Doe, by his attorney, George F. Sallè, and impleaded Bernard De Sylva, in whose stead the landlord, Files, was admitted to defend in a plea of trespass in ejectment, upon the demise of John Pollard, William Pollard, John Fowler and Harriett his wife, late Harriett Pollard, Henry P. Ensign and Phebe his wife, late Phebe Pollard, George Huggins and Louisa his wife, late Louisa Pollard, Joseph Case and Eliza his wife, late Eliza Pollard, for a term of years not yet expired, to a certain lot or parcel of land lying in the city of Mobile, between Church street and North Boundary street, and bounded on the north by the south side of what was formerly called John Forbes & Co.'s canal, on the south by what was called the King's wharf, on the west by Water street, and on the east by the channel of the river; and thereupon issue was joined between the said lessors of the plaintiffs and the said Files, who, at the trial, in pursuance of an act of the Legislature of Alabama, passed on the eighth day of January, one thousand eight hundred and thirty-six, entitled "An act for the relief of tenants in possession against dormant titles, suggested to the court that he and those whose estate he has in the lands or tenements sued for have had adverse possession of the same for three years next before the commencement of such suit, and have made valuable improvements on the lands, so on which suggestion issue was joined; also, on the day and year aforesaid, the said issues so joined, between the said parties as aforesaid, came to be tried by a jury for that purpose duly impannelled and sworn; at which day came there as well the said plaintiffs as the said defendant, by their respective attorneys; and the plaintiffs, in order to maintain the issue on their part, gave in evidence an act of Congress passed on the twenty-sixth day of May, one thousand eight hundred and twenty-four, entitled "An act granting certain lots of ground to the corporation of the city of Mobile, and to certain individuals of said city." They further gave in evidence an act of Congress passed July 2d, 1836, entitled "An act for the relief of Wm. Pollard's heirs." They further gave in evidence a patent issued on the fourteenth day of March, one thousand eight hundred and thirty-seven, in pursuance of said act of Congress of July 2d, 1836, which patent embraced the premises in question. They further gave in evidence a Spanish grant, of which the following is a translation:

Mr. COMMANDANT:

William Pollard, an inhabitant of this district, before you, with all respect represents: that he has a mill established upon his plantation, and that he often comes to this place with planks and property from it, and that he wishes to have a place propitious or suitable for the landing and safety thereof, and that having found a vacant piece at the river side, between the canal which is called John Forbes & Co.'s and the wharf at this place, he petitions you to

grant him said lot on the river bank, to give more facility to his trading; a favor he hopes to obtain of you.

WILLIAM POLLARD.

MOBILE, 11*th December*, 1809.

MOBILE, 12*th December*, 1809.

I grant the petition; the lot or piece of ground he prays for, on the river bank, provided it be vacant.

CAYETANO PEREZ.

The plaintiff then proved the genuineness of the signature of Cayetano Perez, and referred to the State papers relating to the public lands to show the different periods during which Perez was in command.

The plaintiff then gave in evidence that the premises sued for were situated between Church street and North Boundary street and immediately in front of lots known under the Spanish Government as water lots, and that the said lot now sued for was, in the year one thousand eight hundred and twenty-four, and is now, known as a water lot; that it lies on the east side of Water street; that what is now Water street was, under the Spanish Government, and at the date of the grant to Forbes & Co., hereafter attached, a natural ridge, and that the ordinary tides did not overflow said bridge, and very high tides entirely covered said ridge; that to the north of the lots lying immediately west of the lot sued for, near Conti street, there was a depression in said ridge, where the water, at high tide, flowed around upon the eastern part of the lots lying, as before stated, immediately west of the lot sued for, and which were known as water lots under the Spanish Government.

The plaintiffs then gave in evidence that John Forbes & Co. applied for and obtained permission, from the Spanish Government, to open or cut the canal which was called John Forbes & Co's canal, after they had obtained a grant for the lot lying immediately west of said canal.

The defendant, in order to maintain the issue on his part, gave in evidence a Spanish grant to John Forbes & Co. for a lot of ground eighty feet front on Royal street with a depth of three hundred and four feet to the east, which is hereto attached and marked A, together with the plat or survey thereto attached, which is made part of this bill of exceptions; and proved that the said lot was situated immediately west of the lot sued for, and was separated from it now only by Water street; but that Water street was not known at the date of this grant, and that said street was laid off in 1820 and 1821. The defendant further gave in evidence a certificate of confirmation for the said lot to John Forbes & Co. who were the successors of Panton Leslie & Co., the original grantees, which is also made a part of this bill of exceptions, and marked B, by which it will appear that 304 feet were confirmed to Forbes & Co.

The defendant also proved that one Curtis Lewis, some time in '22 or '23, sunk some flat boats in the canal called Forbes & Co., and proceeded to fill up the lots now sued for, but that one James Inerarily, one of the firm of Forbes & Co., dispossessed him in the night, and erected a smith's shop, and continued in possession about nine months, when Curtis Lewis regained possession by writ of forcible entry and detainer.

It further appeared in evidence that the ridge in Water street was about fifteen or twenty feet in width, and that it was covered by the ordinary tides for about one-third of its width, up to the year 1822, and that all the land east of Water street, as at present laid out, up to 1813, was below the ordinary high water mark. It further appeared that the firm of Forbes & Co. entered upon the lot granted to them as aforesaid, and made valuable improvements on it, and fulfilled the conditions of the grant, and on the 25th May, 1824, held the land to the west of Water street without dispute.

It further appeared that the first improvements on the lot east of Water street were made by Curtis Lewis, except the canal, and improvements along it, of John Forbes & Co.; but it was also in evidence that, in 1811, a witness had seen the servants of Wm. Pollard removing some drift wood and piling some lumber on the lot in question.

The nature and extent of Curtis Lewis' improvements are before stated. The reports of commissioner Crawford, upon the titles before referred to, were read from 3d volume of the State papers, and they are understood to form a part of this bill of exceptions.

E. S. DARGAN, [L. S.]

The defendant then connected himself with the title of Curtis Lewis, Forbes & Co. and the corporation of the city of Mobile, which claimed the same by virtue of the act of 1824 above referred to.

In the progress of the trial, when the plaintiffs offered in evidence the Spanish grant to Pollard, the defendant's counsel offered evidence, the object of which was to prove that the date of the grant had been altered, the plaintiffs objected to the introduction of the evidence for that object, but was overruled by the court, to which he excepted. The defendant then passed the grant to the witnesses, who, upon an inspection of the same, were of opinion that the figures 09, in the date of 1809, on the face of the grant, had been altered.

The plaintiff then offered witnesses who proved, that having inspected it with a spy-glass, the alteration was from 1810 to 1809. Plaintiffs also proved that Cayetano Perez was commandant at Mobile in 1810.

The defendant further gave in evidence that he had made valuable improvements on the lot sued for since the eighth day of January, 1836, to the value of seven thousand dollars; whereupon the plaintiffs, by their counsel, prayed the court to charge the jury, 1st, that the

said Spanish grant made to William Pollard was ratified and confirmed by the 8th art. of the treaty of amity, settlements and limits, between the United States and his Catholic Majesty, dated 22d February, 1819; which charge the court refused to give; to which the plaintiffs, by their counsel, excepted.

The plaintiffs then, by their counsel, prayed the court to charge the jury that the act of Congress of 26th May, 1836, confirmed the said Spanish grant to Pollard; which charge the court refused to give, but, on the contrary, charged the jury, if they believed the evidence to be true, the fee simple to the premises sued for were vested in Forbes & Co., and that the act of Congress of 1824, and 1836, and the patent in pursuance thereof, were utterly void, so far as relates to the premises in question, and that no title vested in the lessors of plaintiff by virtue of said acts of Congress and said patent; to which charge the plaintiffs excepted.

The plaintiffs, by their counsel, then prayed the court to charge the jury, that if they should find that an alteration had been made in the date of Pollard's Spanish grant, advantage could not be taken of it in an action of ejectment, but by a sci. fa. in the name of the General Government, or a bill in equity; which charge the court refused to give, but, on the contrary, charged, that if they should believe that the date had been altered, that they should find for the defendant, unless they were satisfied from the evidence that, though altered, it was made in fact whilst Perez was commandant; that the alteration of the date would not affect the grant if Perez was commandant at the time of the execution; but that if altered, the law would not presume that the grant was made while Cayetano Perez was commandant, but that this must be shewn by the evidence; to which charge, so given, and the refusal to charge as prayed, the plaintiffs excepted.

The plaintiffs then prayed the court to charge the jury, that the act of January 8th, 1836, passed by the Legislature of Alabama, entitled "An act for the relief of tenants in possession, against dormant titles," is contrary to the tenth section of the first article of the Constitution of the United States, and is therefore void; which charge the court refused to give, but, on the contrary, charged that it is constitutional; to all which the plaintiff excepted, and prayed the court to sign and seal this his bill of exceptions, which is done.

E. S. DARGAN, *Judge.* [L. S.]

Water Lot, No. 1.

Titula de concession de un Solar in la Poblacion de la Mobile, a favor de los S. Senores Panton Lesley y Compañia.

With certificate of confirmation prefixed.

Don Juan Ventura Morales, contador g'ral de Exto. Intendente interino de Rl. Hac'da de estas Provincias de la Louisiana y Florida occidental; Superintendente sub delegado, Ines de arivadas de tierras y solares ralengos.

Por quanto habiendose presentado en este tribunal los Señores Panton Leslie y Comp'a, por medio de Guillermo Simpson su agente y aporderado en la Morilla, solicitando se les conseduse un terreno en aquella Plaza con el frente de òchenta pris, y dos cientos òchenta y òcho de fondo vaxo la òbligacion de lebentardo larra planandolo, como tambien el camino que va al Muelle, por lo senagoso y pantanoso de uno y òtro, ademas de anegarse de que resulta perjuicio al publico advirtiendose la utilidad que esperimentará con la obra que se ha òfricide hacer, segun se hà propuesto, como informo el Sor. Comand'to y sub-delegado de Rl. Hac'da de la mismia Plaza dn. Joaquim do Osono: quedadose vista de la solicitud al Sr. fiscal, convino a ella en el supuesto de compluse lo òfricido; que por ante de primero de febrezo del corriente año concedillo a la casa de los enunciados Panton Leslie y Comp'a el terreno que a se nombre se fidio vaxo las condiciones propuestas, con calidad de que informose el citado Sor. sub-delegado el tiempo que era suficiente para evaguaz los citidas condiciones remetiendose un Plano de la nudida del indicado terreno para que con arriglo a todo se despachase el titulo; que habiendo dirigido este Plano contencion de la medida hecha por el agrimensor d'n Jose Collins el que acompaño el Sr. sub-delegado con su informe, mando unido todo al expediente y por anto asesorado de das del corriente mando despachar el titula con la prevencion que se oiza. Por tanto usando de la facultad cometida a esta intendencia, en nombre del Rey N'no. Señor (Dios le que'r) concedo a la casa de los enunciados Srs. Panton Leslie y Comp'a el terreno que ha solicitado en la Plaza de la Mobila, en al parage contenido en el Plano figurative que se hà remitido vaxo las dimenciones rambos y distancias que comprehende contentivo de ochenta püs de frente a la Callo Real, y dos cientos ochenta y ocho de profundidad hasta el rio de la citada Mobila; lindando per sùs custados, con la calle de Govierno y terreno a la misma casa y comp'a en cuya virtud le declaio entero y directo dominio al enunciado terreno, para que, como sayo proprio to disfente, use, o enagene a su voluntad, dandole poder para que aprehenda la posesion, o la reclama si se le impiduse y en la que le pongo y ampazo sue perjuncio de tercero que major derecho tenga con la calidad, condicion y circumstancia de levantado, relluando, ò terraplendito, como tambien de componer el camino que viene al Muelle, segun se a ofricido, para impeda las pujuccios esperimentados hasta ahora y que el publico quede veneficiado de sus resultas, sue ayas operaciones, que se haran dentro de quatro meses contados des de el dos del corriente que dará nula esta gracia: mediante la qual mandè, librar el presente, firmado de mi mano, sellado con el de mis armas y refrendado de infra scripto escribano de Rl. Hac'da quien, como tambien la conta duria principal tomaza la vazop de este titulo como està despuesto en las instrucciones. Dado en està ciudad de la Neuva Orleans, a nemero de Junio, de mil ocho cientas dos.

JUAN VENTURAS MORALES.

Por me'do del Sr. Intend'to,

[SELLO.] CARLOS XIMENES.

Nota.—Que queda tomado vazor del titulo anteced'to en el libro de ellos afaxas quarenta y quatro buetta hasta la quarenta y seis Na. Orleans fra ut supra.

XIMENES.

NUEVA ORLEANS, 12 *de Junio de* 1802.

En la contadivisa q'ral de Extō y R'l Hac'da de esta ciudad de Nueva Orleans, se tomò vazor del titulo antecedente en al libro destinado à este fin q. 106'ta y 11 como se.

Prev'nue—Gilberto Leonard, Manuel Armieres.

[For map, see original.]

D'N VINCENT SEBASTIAN PINTADO, Agrimensor general de la Florida Occidental.

Habiendo concedido el Señor Intendente g'ral de esta Provincia a los S. Sen'rs Panton Leslie y Compañia, un solar de de achueta pies de ancho y doscientes achenta y acho de largo en la Poblacion de la Mobila, segun el titulo de concesion enforma, despuchado in la Nueva Orleans, capital de la Louisiana, en nuebe de Junis de mil ocho cientos y dos, al que se amitió, agregar per mi anticedor el duplicado de la dilig'a de apío y pluno demonstratio, ni apereco registrado en la officina de agrimensura gen'l achora a mi cargo; y contando per el dicho titulo de concess'n haverce medido e lindado el solar per el agrimensor disputad que fué para agual puesto; Don Josef Collins cuio plano figurativo y dilig'a de apio original, se uniò al expediente del asuento, promorvido per Don Guillermo Simpson, agente de deha casa, se presento Don Juan Forbes en la actualidad director de la misma, con el duplicado del plano y diligencia dado per el citado Collins, para que en sa vista se registrase y dispachase documento autentice y comprobante para unio al titulo de conces'n del dho solar, et que està situade en la entedha Poblacion de la Mobila y talo del este de la Calle Royal, lindando por la parte septentrional con atro solar de la misma casa; per la meridional, con la que Laman calle del Gobierno, sobri la que se cuenta las doscientes e ocho pies de largo: per la oriental con el rio de la Mobila, y per la occidental con la citada Calle Real, sobre la que se cuentan las ochenta pies de sa aucho como mas claramante manifiesta el plano que antede, copiado del que fermo el referido agrimensor y para que conste day la presente en la plaza de Pansacola a los viente y seis dias del merde Septembre de mil ocho cientes y seis añas.

Advertencias.

Aunque el original no mensina, se los pies lineales que meden los tados del terreno, san de Burgos, Londres ò Paris, se devan entendar los ultimos per ser conforme a la costumbre geodetica de esta Provincia.

Segun la delineacion del solar en el plano forma un parallelogramo rectangulo conteniendo per consiguente sententa y una perchas trienta y seis pies de area ò superficie plana; pero no concuerdan las direciones de la oragula anatadas en el con dha figura pues dirigiendose la testa (A B) al sur 62º O. de la aguja, para que la B C le fuese perpendicular levantada del extremo B dev'cion corner al N. 28º O. per lo que se tendrà presente entodo que la figura del terreno debe ser la de parallelogramo rectangulo; y que de las dos direciones que se mensionan, se tomarà la que mas adapte al local.

Sin embargo de que en al original se dice, lindan al terreno per la parte oriental con el rio de la Mobila, y que en al plano se figura el extremo mas este del dho, à ciesta distancia al aeste del rio, se debera tener entendido, que los doscientos acheuta y ocho pies debere contarse des de el tado oriental de la Calle Real area al rio hasta dende alcarinfha ut retro.

VINCENTE SEBAS'N PINTADO.

Queda registrada en al lib. 7 de apios fol. 6, y Buelta N, 1782. Pensacola, fha ut retro.

VINCENTE SEBAS'N PINTADO.

Exhibit B.

Commissioner's report, No. 2—Certificate, No. 3.

LAND OFFICE, *Jackson Court-house.*

In pursuance of the act of Congress passed on the 3d March, 1819, entitled "An act for adjusting the claims to land, and establishing land offices in the districts east of the island of New Orleans:

We certify that claim No. 3, in the report of the commissioners No. 2, (claimed by John Forbes & Co.—original claimants, Panton Leslie & Co.,) is recognised by the said act as valid against any claim on the part of the United States, or right derived from the United States; the said claim being for 80 feet in front by 304 in depth, area 24,320 feet, situate in the town of Mobile, and claimed by virtue of a Spanish grant executed by J. V. Morales, and dated 9th June, 1802.

Given under our hands this eighth day of January, 1820.

W. BARTON, *Register.*

WM. BARNETT, *Receiver P. N.*

Attest: JOHN ELLIOTT, Clerk.

Writ of Error.

THE STATE OF ALABAMA,

To the Clerk of the Circuit Court of Mobile county, greeting:

Whereas it is represented, that in the record and proceedings of a cause tried and determined at a term of the circuit court, begun and held for the county of Mobile, on the third Monday of April, in the year of our Lord one thousand eight hundred and forty-one, wherein John Doe, on the demise of the heirs of Wm. Pollard, *were* plaintiffs, and Richard Few, Bernard De Sylva in possession, was defendant, manifest error hath intervened, to the damage of the said plaintiffs: therefore we command you to send, certified under your hand and seal, a transcript of the record in said cause, to the judges of our Supreme Court, at a term thereof to be holden on the first Monday of June inst., that if error there be, the same may be corrected.

Witness Malcolm J. McRae, clerk of our said court, at office, this sixteenth day of June, in the year of our Lord one thousand eight hundred and forty-one, and of American independence the sixty-fifth year.

Issued 16th day of June, 1841.

Attest: M. J. McRAE, *Clerk.*

I, Malcolm J. McRae, clerk of the Circuit Court of Mobile county and State of Alabama, hereby certify, that the foregoing twenty-eight pages and ten lines contain a true transcript of the record and proceedings in the case of John Doe ex dem. of the heirs of Wm. Pollard, vs. Richard Few, B. De Sylva in possession.

L. S. In testimony whereof, I have hereto set my hand, and affixed the seal of the said circuit court, this seventeenth day of June, A. D. in the year of our Lord one thousand eight hundred and forty-one.

Attest: M. J. McRAE, *Clerk.*

Be it also remembered, that on the day of the term of this court, first above stated, the plaintiffs in error, by their attorneys, filed their assignment of errors, as follows:

SUPREME COURT OF ALABAMA:

June Term, in the year 1841.

DOE, ex dem. heirs of Wm. Pollard, *vs.* FEW, DE SYLVA, tenant in possession. } Ejectment from the Mobile Circuit Court.

And now, at this day, came the plaintiffs in error and say, that in the record and proceedings of the said circuit court there is manifest error in this, that judgment was given in the said circuit court in favor of the defendant, when it ought to have been in favor of the plaintiff.

The said circuit court likewise erred in this, that they instructed the jury that the title to the premises in question was in John Forbes & Co., and not in the lessors of the plaintiff.

The said court erred in this, that they instructed the jury that the lessors of the plaintiff had no title to the premises in question.

The said court erred in this, that they authorized parol evidence to be given to the jury to invalidate the patent for the premises, issued by the United States, by authorizing an inquiry into the grounds upon which the said patent had been issued.

The said court erred in this, that they charged the jury that if they should believe that the date of the grant to William Pollard had been altered, they should find for the defendant, unless, &c.

The said court erred in this, that they instructed the jury that the acts of Congress of 1824 and 1836, and the patent issued in pursuance thereof, were utterly null and void, so far as relates to the premises in question, and vested no title in the lessors of the plaintiff.

The said court erred in this, that they instructed the jury that the act of January, 1836, passed by the Legislature of Alabama, entitled "An act for the relief of tenants in possession," was valid and constitutional.

For the above, and other errors in the said record and proceedings, the said plaintiffs, by their counsel, pray that the said judgment may be reversed, annulled, and held as naught, and the said proceedings may be set aside; all of which errors and erroneous proceedings of the said circuit court, the said plaintiffs are ready to prove by the record herein; wherefore, they pray judgment, &c.

JOHN TEST, *Att'y. for Plff's.*

And the said defendant, by his counsel, comes and says, that in the said record and proceedings, as the same appears and is set forth above—In nullo est erratum; wherefore, he prays judgment, &c.

STEWART and EASTON,
Atty's. for Def't.

Upon which writ of error, and transcript of record, proceedings were had in the said supreme court, as follows, to wit: Present, the honorable Henry W. Collier, chief justice, Henry Goldthwaite and John J. Osmond, judges.

Opinion of the court, delivered by the chief justice, on the day of July, 1841, being a day of said term.

DOE dem. Pollard's heirs,
vs.
FILES.

This was an action of ejectment in the circuit court of Mobile, at the suit of the plaintiffs against the defendant, for the recovery of a "messuage or lot of land," situate in the city of Mobile.

The defendant being admitted to defend the action, instead of the tenant in possession, confessed lease, entry, and ouster, and relying

on the title only, pleaded "not guilty." He also, according to the statute in such case provided, suggested, that since the 8th January, 1836, he had made improvements on the premises in controversy, of the value of ten thousand dollars, under the belief that his title to the same was valid. Thereupon, the cause was submitted to the jury.

On the trial, a bill of exceptions was sealed at the instance of the plaintiffs. To maintain the issue on their part, the plaintiffs read to the jury the act of Congress of the 26th of May, 1824, "granting certain lots of ground to the corporation of the city of Mobile, and to certain individuals of said city;" and the act of the 22d July, 1836, entitled "An act for the relief of William Pollard's heirs," as also a patent, which had issued in pursuance of the latter act, for the premises in question.

They also gave in evidence, a grant of the land in dispute, made by Cayetano Perez, as commandant of Mobile, on the 12th December, 1809—proved the genuineness of Perez's signature, and referred to the State papers, relating to the public lands, to show the different periods during which he was in command.

It was further shown, that the lot in controversy was situated between Church and North Boundary streets, lies east of Water street, in front of lots known under the Spanish government as water lots, was itself, in 1824, a water lot, and during the time of the Spanish government, the tide flowed over it.

The defendant, in order to make out his defence, gave in evidence a Spanish grant, made the ninth of June, 1802, to Panton, Lesley & Co., for the lot directly west of that in dispute, and on the opposite side of Water street. This grant was confirmed to John Forbes & Co., as the successors of the grantees, on the 8th January, 1820.

The land east of Water street, was below ordinary high water mark in 1813, and Water street was not laid off until 1820 or '21.

John Forbes & Co. entered upon the land granted them, fulfilled the conditions of the grant, made valuable improvements thereon, and held undisputed possession of it on the 26th May, 1824.

Curtis Lewis made the first improvement on the lot east of Water street, except a canal and improvements along it, which were made by John Forbes & Co. It was, however, in evidence, that the servants of Wm. Pollard were seen removing some drift wood, and piling some lumber upon it in 1811.

The defendant connected himself with the title of Curtis Lewis, John Forbes & Co., and the corporation of the city of Mobile, which claimed the lot in dispute under the act of the 26th May, 1824.

Evidence was adduced to show, that the date of the grant to Pollard had been altered from 1810 to 1809; and the plaintiffs then proved, that Cayetano Perez was commandant of Mobile in 1810.

The defendant also proved, that he had made improvements on the lot in question, to the value of seven thousand dollars, since the 8th January, 1836.

Other facts are shown by the bill of exceptions, but as it is not necessary to state them in order to raise the questions of law examined by the court, they need not be here noticed.

The plaintiff's counsel moved the court to instruct the jury—

1st. That the Spanish grant to William Pollard was ratified and confirmed by the 8th art. of the treaty of amity, settlement, and limits, between the United States and his Catholic Majesty, dated the 22d Feb'y, 1819.

2d. That the act of Congress of the 26th May, 1836, confirmed the Spanish grant to Pollard. Which charge the court refused to give. But charged the jury, if they believed the evidence to be true, the fee simple to the premises in dispute vested in Forbes & Co., and the acts of Congress of 1824 and 1836, and the patent issued in pursuance thereof, were utterly void, so far as relates to the subject in controversy, and the lessors of the plaintiffs derived no title from those sources.

3d. If they should find that an alteration had been made in the grant to Pollard, advantage could not be taken of it, in an action of ejectment, but by a *scire facias* in the name of the United States, or by a bill in equity. Which charge the court refused to give. But charged the jury, that if they should believe that the date had been altered, then they should find for the defendant; unless they were satisfied from the evidence, that the alteration was made while Perez was commandant. But if the grant was altered, the law would not presume that it was issued while Perez was commandant. This fact must be shown by proof.

4th. That the act of the Legislature of Alabama, of January the 8th, 1836, "for the relief of tenants in possession, against dormant titles," is contrary to the 10th section of the 1st article of the Constitution of the United States, and is therefore void. Which charge the court refused to give. But instructed the jury, that the statute was constitutional.

To the refusals to instruct as prayed, as well as to the instructions given to the jury, the plaintiffs excepted; and a verdict being found for the defendant, and a judgment thereon rendered, they have prosecuted a writ of error to this court.

1. The question whether the eighth article of the treaty of amity, settlement, and limits, concluded between the United States and the King of Spain, on the 22d February, 1819, ratifies and confirms the grants of land, made before the 24th January, 1818, by his Catholic Majesty, or by his lawful authority, in the territories ceded by his Majesty to the United States, is no longer an open question. The case of Foster and Elam *vs.* Neilson, 2 Peters' Rep., 254, expressly decides, that all grants made by the Spanish authorities, of any portion of the lands ceded to the United States by the treaty of Paris of 1803, subsequent to the treaty of St. Ildefonso of 1800, excepting such as were made to actual settlers previous to the twentieth of December, 1803, are null and void. That case is confirm-

ed by Garcia *vs.* Lee, 12 Peters' Rep., 511; and by the still later decisions of Keene *vs.* Whitaker et al., 14 Peters' Rep., 170. See, also, Inerarity *vs.* Byrne, 8 Porter's Rep., 176, and the heirs of Pollard *vs.* Kibbe, 9 Porter's Rep., 712.

2. If the law as laid down, by a majority of the court, in the lessee of Pollard's heirs *vs.* Kibbe, 14 Peters' Rep., 353, is to be regarded as decisive of the law applicable to the plaintiff's title, and as excluding all objection to it, then the answer given by the circuit court to the second charge prayed, is confessedly erroneous. Of the authority of that case, we have nothing to say. We may however be permitted to remark, with all deference, that we should yield to it more willingly, if it had the sanction of a majority of the Supreme Court. We are aware that, as reported, the judgment seems to have been concurred in by five of the justices; but we have in our possession a manuscript copy of the opinions of Justice Thompson, McLean, Barbour, and Catron, and the judgment that was rendered; at the foot of which, is the following memorandum: "Dissenting justices, Catron, Barbour, and Wayne. Mr. Chief Justice Taney did not sit in this case." Attested as follows, "True copy, test, Wm. Thos. Carroll, C. S. C., U. S." That Mr. Justice McKinley was absent during the entire term, appears from a note of the reporter. If the attestation of the clerk be correct, then but four of the justices concurred in reversing the judgment of this court. And to all this, it may be added, that Mr. Justice McLean did not agree to the judgment of reversal, so far as we are informed by his opinion, upon the ground that the grant to William Pollard in 1809 was a "new grant" within the meaning of the act of the 26th of May, 1824. But he yielded his assent to the conclusion of Mr. Justice Thompson, (as we understand it,) because the second section of that statute required the improvement to be made on the lot east of Water street, and to entitle the proprietor of the lot, immediately west of the water lot, the improvement should have been made by himself. These were questions which, it seemed to us, were wholly unimportant to be considered, unless Pollard's was a "new grant," since it is an undisputed principle, that the plaintiff must recover upon the strength of his own title, and not upon the weakness of his adversaries.

We have taken this view of the case referred to, with the most profound respect for the Supreme Court of the United States, and have only to say, that we hope an opportunity may soon be afforded for a re-examination of the act of 1824.

Conceding, however, to the lessee of Pollard's heirs *vs.* Kibbe, all right that may be claimed for it, and still the answer of the circuit court, to the second prayer, is not objectionable on error. The water lots of 1824 were a part of the shore of Mobile bay, over which the tide flowed, and must, consequently, be regarded as a portion of the navigable waters of this State. Among the propositions submitted by Congress to the convention which formed our

constitution, for its acceptance or rejection, it is declared that "all navigable waters within the said State, shall forever remain public highways, free to the citizens of said State, and of the United States, without any tax, duty, impost, or toll therefor, imposed by the State." By the ordinance which makes a part of the constitution, the convention accepted the propositions submitted. Now here is a clear dedication to the public use, of the navigable waters within the State, and an implied inhibition upon the power of Congress to grant the shore. Other arguments, quite as cogent, might be urged against the exercise of such a power, but we will content ourselves with a reference to the Mayor, &c., *vs.* Eslava, 9 Porter's Rep., 577, in which the question is largely considered.

The fact, that the ancestor of the plaintiffs had a grant from the Spanish authorities for a part of the shore, can make no difference. The stipulation between the Federal Government and this State placed it beyond the power of the former to bestow its bounty by confirming that grant, which we have seen was void.

If the acts of 1824 and 1836 do not operate so as to invest the plaintiffs with a title, it is clear that the patent, which, upon *its face*, professes to be issued under the authority of the latter act, is merely *void*. The circumstances, under which the patent emanated, are shown by an inspection of the document itself, and the powers of a court of law are as competent to declare its invalidity, as a court of equity can be, in any form of proceeding. Indeed, it would be an anomaly in judicial proceedings, for a court of law to sustain an instrument void on its face, upon the ground that chancery should be resorted to in order to vacate it. The Supreme Court in Bagnell *vs.* Broderick, 13 Peters' Rep., 436, pushed the law on this point to its utmost limits. But that case is clearly distinguishable from the one before us. In that case, the court held, that in an action at law, a patent from the United States for a part of the public lands, is conclusive, and the party claiming adversely will be forced into equity to show that it issued by mistake. There the patent was in legal form, and apparently issued to the person entitled to the land conveyed, so that it was necessary to establish its irregularity by extrinsic proof; and in that, it differed essentially from the patent offered in evidence in the present case. There are also other points of difference, which will be readily perceived by a comparison of the cases. Ross *vs.* Doe dem. Barland et al. 1 Peter's Rep. 655.

3 and 4. Even conceding that the third and fourth prayers for instructions were strictly in conformity to law, and the charge given in answer to the third prayer was directly opposed to it, yet in all this there is no available error. The giving or refusing the charges could not benefit or injure the plaintiffs. If our view of the acts of 1824 and 1836 is correct, the plaintiffs could not recover, and the court having so instructed the jury, the plaintiffs cannot complain, that they have been prejudiced by the giving or withholding any other instructions.

Without attempting to add any thing further, the judgment of the circuit court is affirmed.

The clerk is, therefore, instructed to enter the following judgment:

This day came the parties, by their attorneys, and thereupon the record in this cause, and the matters assigned for error therein, being argued and examined, it seems to this court that in the record and proceedings of said circuit court there is no error; it is, therefore, considered by the court that the judgment of the circuit court be in all things affirmed; and that said Joseph T. Files, survivor, &c., do recover of said John Pollard, William Pollard, John Fowler and Harriett his wife, late Harriett Pollard, Henry P. Ensign and Phebe his wife, late Phebe Pollard, George Huggins and Louisa his wife, late Louisa Pollard, Joseph Case and Eliza his wife, late Eliza Pollard, the costs of this cause in this court.

THE STATE OF ALABAMA.

I, James B. Wallace, clerk of the supreme court of said State, do hereby certify that the foregoing 29 pages contain a true, full, and perfect transcript of the writ of error, record, assignment of errors, opinion of the court, and judgment of said supreme court, in the case of Doe *ex dem.* Pollard's heirs *vs.* Files, as the same are of record in my office.

In testimony whereof, I have hereunto subscribed my name, [L. S.] and affixed the seal of said court, this twenty-third day of December, one thousand eight hundred and forty-one.

JAMES B. WALLACE,
Clerk Supreme Court of the State of Alabama.

SUPREME COURT OF THE UNITED STATES.

JANUARY TERM, 1843.—No. 50.

LESSEE OF JOHN POLLARD ET AL., PLAINTIFFS IN ERROR,

vs.

JOHN T. FILES.

Translation of the Spanish document at pages 14 *and* 15 *of the printed Record.*

Title of grant of a lot of ground in the town of Mobile, in favor of Messrs. Panton, Leslie & Co.

DON JUAN VENTURA MORALES, Accountant General of the Army, Intendent *ad interim* of the Royal Treasury of these provinces of Louisiana and West Florida, Superintendant, Sub-delegate, Judge of the port and of the royal lands and lots of ground.

Whereas, Messrs. Panton, Leslie & Co. having, by William Simpson, their agent and attorney in fact in the Morilla, presented themselves before this tribunal, praying that there be granted to them a lot of ground in that place, with a front of eighty feet, and a depth of two hundred and eighty-eight, under the obligation of raising* and graduating† it, and likewise the road leading to the Mole—both being miry and marshy, besides being inundated, whence an injury results to the public: considering the advantage which will be experienced from the work which has been offered to be done according to the proposal, as the commandant and sub-delegate of the royal treasury for the same place, Don Joaquin de Osoño, has reported: that the petition having been seen by the attorney general (*fiscal*), he consented to the same, under the supposition that the offer would be fulfilled; that, therefore, the first of February of the current year, —— granted‡ to the house of the above mentioned Panton, Leslie & Co., the lot of ground which in their name was petitioned‖ for, under the proposed conditions; with the stipulation that the aforementioned sub-delegate should report the time which was sufficient to fulfil the aforementioned conditions; a plat of the said land being remitted, in order that,

Note by the translator.—The record having been made up, apparently, by a clerk unacquainted with the Spanish language, it has been necessary, in a great many instances, to conjecture the words in the original which were intended to be copied, but which, as they appear in the record, have no meaning. This will account for the notes.

* In the record, *lebentardo*, meaning *levantarlo*.

† In the record, *larra planandolo*, but evidently intended to be *terraplenandolo*, and so translated.

‡ In the record, *concedillo*, which may have been intended for *concedilo, I granted it*, or *concediolo, he granted it*.

‖ In the record, *fidio*, which, not being Spanish, was no doubt *pidio*.—*Translator*.

with regard to all things, the title might be despatched. And this plan, containing* the survey made by the surveyor, Don José Collins, which the sub-delegate accompanied with his report, he commanded to be all annexed to the despatch (*expediente*), and by an assessorial act of the second instant, directed the title to be despatched, with the provision that the same be heard. Wherefore, making use of the power committed to this Intendency, in the name of the king our master, (whom God preserve,) I grant to the house of the above mentioned Messrs. Panton, Leslie & Co. the lot of ground prayed for in the town of Mobile, in the place contained in the figurative plat which has been remitted, under the dimensions, rhombs, and distances which it comprehends; containing eighty feet front on the Calle Real, (Royal street,) and two hundred and eighty-eight in depth, unto the river of the said Mobile; being bounded on its sides by the Calle de Gobierno, (Government street,) and a lot belonging to the same house and company. In virtue whereof, I declare them to have entire and direct dominion in the said land, in order that, as their own, they may enjoy, use, or alien it at their will—giving them power to take possession, or to sue for it if impeded therein; wherein I place and warrant them, without prejudice to any third person who may have greater right; with the stipulation and condition of raising, filling, and graduating it, and also of repairing the road leading to the Mole, according to their offer, in order to avoid the injuries until now experienced, and that the public may be benefited by its results. Without† which operations, which shall be done within four months, counting from the second instant, this grant shall be null. In consideration whereof, I have ordered to be delivered this present, signed by my hand and sealed with my arms, and countersigned by the subscriber, notary of the royal treasury, who, as likewise the principal office of accounts, will make‡ registration of this title, as is ordered in the instructions.

Given in this city of New Orleans, the *nemero*‖ of June, one thousand eight hundred and two.

JUAN VENTURA MORALES.

By order of the Intendant.

[SEAL.] CARLOS XIMENES.

(Page 16 of the printed record.)

Note—That the aforegoing title is recorded§ in the book thereof, at leaves¶ forty-four and over to the forty-sixth.

New Orleans, date ut supra.

XIMENES.

* In the record, *contencion de*, which is nonsense, but which I take to have been *conteniendo.*

† In the record, *sue ayas*, which is jargon; no doubt *sin cuyas, without which.*

‡ In the record, *tomaza la vazop*, a jargon; no doubt intended for *tomara la razon.*

‖ This word is not Spanish; it may be intended for *primero* (first), or *nueve* (ninth).

§ In the record, *vazor* for *razon.*

¶ In the record, *afazas* for *a fojos.*

New Orleans, 12th June, 1802.

In the general office* of accounts of the army and of the royal treasury of this city of New Orleans, the aforegoing title was recorded† in the book destined for that end, 9, 106, *'ta y 11 como se.*
Prev'nue: GILBERTO LEONARD MANUEL ARMIERES.

Don VINCENT SEBASTIAN PINTADO, Surveyor General of West Florida:

The Señor Intendant General of this province having granted to Messrs. Panton, Leslie & Co., a lot of ground of eighty feet in breadth, and of two hundred and eighty-eight in depth, in the town of Mobile, according to the formal title of grant despatched in New Orleans, the capital of Louisiana, the ninth of June, one thousand eight hundred and two, to which my predecessor omitted to annex the duplicate of the act of survey and demonstrative plat, nor does the same appear registered in the office of the surveyor general, now in my charge; and it appearing, by the said title of grant, that the lot of ground was surveyed and bounded by the deputy surveyor, who was then for that port, Don Josef Collins, whose figurative plat, and original official warrant of survey, was annexed to the despatch [expediente] of the matter moved by Mr. William Simpson, agent of the said house; Mr. John Forbes, at present director of the same, [house] has presented himself with the duplicate of the plan and official act given by the said Collins, in order that, upon sight thereof, there might be registered and despatched an authentic and verifying document, to be annexed to the title of grant of the said lot of ground, which is situated in the before mentioned town of Mobile, and [*talo*‡] on the east of the Calle Real, [*Royal street,*] bounded on its northern part by another lot of ground of the same house; and on the southern by what is called the Calle de Gobierno, (Government street,) upon which are counted the *two hundred and eight feet* of depth; on the east by the river Mobile, and on the west by the said Calle Real, (Royal street,) upon which are counted the eighty feet of its breadth, as more clearly appears by the aforegoing plan, copied from that which was signed‖ by the said surveyor.

In testimony whereof I give these presents, in the town of Pensacola, the twenty-sixth day of the month of September, in the year one thousand eight hundred and six.

Advertisements.

Although the original does not mention whether the lineal feet, which measure the sides of the land, are of Burgos, London, or Paris, the latter should be understood as being conformable to the geodœtical usage of this province.

* In the record, *contadivisa* for *contaduria.*
† *Vasor* for *razon.*
‡ Unintelligible; perhaps *lado—side.*
‖ The word in the record is fermó, (not Spanish,) which may be firmó—*signed;* or formó—made.